

FEDERAL ADVISORY COMMITTEE ACT



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Background



- **Advisory committees to the Federal Government have a long and storied history**
 - George Washington/Whiskey Rebellion
 - Warren Commission/JFK
 - Three Mile Island Commission, 9/11 Commission, BRAC Commission
 - Presidential Commission on Implementation of U.S. Space Exploration Policy
- **Today, approx. 1000 Federal advisory committees advise the Executive Branch, with over 60,000 committee members**
 - Approx. \$300M in annual expenses; 6700 meetings; 1000 reports
 - HHS, DOI, USDA, DOD, NSF, DOC: large no. of advisory committees
 - NASA's advisory committees have fluctuated, ranging from 2 – 26

What is a FACA Advisory Committee?



- **1972 Federal Advisory Committee Act (FACA) – Public Law 92-463**
 - Provide advice that is important, relevant, objective, open to public
 - Act promptly to complete work
 - Comply with reasonable cost controls and recordkeeping requirements
- **Established by Statute, the President or Federal agency, or “utilized” by the President or Federal agency**
 - To obtain advice or recommendations for the President or agency
 - Contains at least one non-Federal employee
- **“Good government” tradition (FOIA, Sunshine Act, Ethics, etc.)**

When Does FACA Apply?



5 Questions to Ask:

- Does the group provide collective advice?
- Who does the group advise?
- Who are the group's members?
- Who established the group?
- Who controls the group's activities?

General FACA Requirements



- Develop and file a charter with Congress
- Maintain a balanced membership
- Hold open public meetings
- Keep minutes or summaries of meetings
- Allow public filing of written statements
- Announce all meetings in Federal Register
 - 15 days in advance
- Maintain all committee documents for public inspection

What Must All FACA Committees Have?



Charter

- Top Federal Agency official must decide that an advisory committee is essential to the performance of a duty or responsibility of that Agency
- Charter sets out committee mission/responsibilities/costs; typically has a 2-year duration; automatically terminates unless renewed
- Agency Head signs the Charter after GSA approval; then it is filed with Congress

GSA Approval

- The U.S. General Services Administration (GSA) is responsible for approving all proposed charters for FACA committees
- GSA manages Government-wide ceiling on FACA committees

What Must All FACA Committees Have?

ACMO

- Each Federal Agency required to have an Advisory Committee Management Officer (ACMO, or “CMO”)
- Each Agency Head must appoint a senior official to this statutorily-mandated position
- Role to provide management oversight of all Agency advisory committees, ensure FACA compliance, liaison/annual reporting to GSA
- Charters new FACA committees
- Signs all Federal Register notices (establishment/meetings)
- Works closely with Agency Office of General Counsel on ethics, financial disclosure issues
- Works closely with Agency Exec Secs (“DFO’s”) of advisory committees on policies, procedures, issues, annual reports

What Must All FACA Committees Have?



DFO

- Each FACA advisory committee must have a a Designated Federal Official (DFO) who:
 - Calls, attends and adjourns meetings
 - Approves agendas
 - Maintains required official records of committee, including minutes, membership and cost records
 - Maintains meeting records for availability to the public
 - NASA uses various titles for its DFO's (e.g., executive director, executive secretary) but responsibilities are the same

What Must All FACA Committees Have?



Members

- Membership must be “*fairly balanced*” with regard to points of view to be represented and the functions to be performed.
- Anyone can nominate members for advisory committee membership; Agency Head formally appoints them.
- Two types: “Special Government Employees” (SGE’s) and “Representatives.”
- All SGE’s must file required financial disclosure forms (“450’s”) for review by the DFO and Office of General Counsel.

Why Does FACA Require Public Meetings?



Public Meetings

- Goals of the FACA statute include:
 - Reducing inappropriate influence on government decisions
 - Eliminating government decisions made behind closed doors
 - Improving public confidence in decision-making
 - Allowing public contemporaneous access to decision process
 - Ensuring positive public perception of Federal Agency decision-making
 - “Good government”

Public Meetings – cont'd



- **FACA is a public access, not a public participation statute:**
 - All “deliberations” of a FACA advisory committee seeking to reach “consensus” on advice to be given to the Agency must occur in a public meeting.
 - GSA says “consensus” requires a quorum:
 - Quorum equals 1/2 of number of members, plus 1
 - No requirement that “consensus” be reached in any particular public meeting.
 - Main objective is openness and accountability to the public.

Public Meetings – cont'd

To Assure Public Access:

- **Advance notice of meeting:** Time, location and agenda – must be published in the Federal Register at least 15 calendar days before the scheduled meeting.
- **Accessible meeting location:** But Agency is not required to accommodate all of the public.
- **Accessible committee information:** Includes minutes and documents considered at each meeting. Posting committee information on website recommended.
- **Public may submit documents/written statements:** Committee is free to use public input as it sees fit.
- **Teleconferences are possible:** But need public access, e.g., separate room with speakerphone and call-in line. Also need Federal Register notice.

Public Meetings – cont'd



“Closed Meetings” – Exceptions to Public Meeting Requirement:

- National security
- Trade secrets, or commercial or financial information
- Criminal investigatory records
- Issuance of subpoenas or litigation strategy
- Specifically exempted by statute
- Personnel issues
- Closing a FACA meeting takes place under “Government in Sunshine Act.”
Must be planned in advance, reviewed by ACOMO, Office of General Counsel, and approved by Agency Head. Written Agency determination required, with public access to the determination.

Public Meetings – cont'd



“Non-FACA Meetings” – Activities not Subject to FACA:

- Purely administrative sessions
 - Schedule
 - Membership
 - Operating principles
- Preparatory meetings
 - Drafting sub-groups
- Purely fact-finding meetings
 - Site visits
 - Research
- “Non-FACA meeting” determination memo required; signed by ACMO and Office of General Counsel

Other Key FACA Regulations and Policies



GSA Federal Advisory Committee Management: Final Rule (41 CFR Parts 101-6 and 102-3)

- FACA implementing regulations and guidance
- GSA Government-wide policy role
- Handbook for Federal Agencies on FACA management/operations

NASA Policy Directive: FACA Committees (NPD 1150.11)

- NASA advisory committees will operate in full compliance with FACA.
- All NASA subcommittees, task forces, etc., that report to a parent FACA advisory committee also will operate with same spirit of openness and public accountability as embodied in FACA (“FACA-like”).
- NASA advisory committees are solely advisory; only NASA officials may determine Agency policy or direct Agency actions.

Questions?



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Ethics/Financial

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